

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO. 164/2013

Jawahar Singh Parihar Appellant

Versus

State of Uttarakhand Respondent

With

CRIMINAL APPEAL NO. 88/2013

Bhawan Singh Appellant

Versus

State of Uttarakhand Respondent

And

CRIMINAL APPEAL NO. 115/2013

Guman Singh Appellant

Versus

State of Uttarakhand Respondent

Mr. Ramji Srivastava and Mr. Navneet Kaushik, Advocates, for the appellants.

Mr. H.S. Rawal, Dy. Advocate General (Cri), assisted by Mr. Kuldeep Rawal, Brief Holder, for the State.

30th May, 2014

Hon'ble Servesh Kumar Gupta, J.

All the above titled appeals have arisen out, challenging the same judgment dated 25.2.2013 rendered by the Additional Sessions Judge, Haldwani, District Nainital. So, these are being adjudicated together as herein below.

2. Sessions Trial bearing no. 54/2007 against Jawahar Singh Parihar (A1) & Guman Singh (A2) and the Sessions Trial No. 55/2007 against Constable Bhawan Singh (A3) were proceeded to try them for the offence of Section 302 IPC, but the learned Trial Judge recorded the conviction of all the appellants for the offence of Section 304 Part II of the IPC instead of Section 302 IPC. Each of them has been sentenced to 8 years rigorous

imprisonment. Trials pertain to Crime No. 299/98, PS Rudrapur.

3. It is pertinent to note that A1 was provided with an official security personnel, who was none other but the A3, while A2 was his factory manager to look after his industry in the outskirts of Rudrapur town.

4. FIR was lodged against all the three by one Arun Shukla, who was a local politician because the deceased Dhananjay Shukla was the nephew of the informant. As the facts emerge out from the FIR Ex. Ka-4 and from the testimony of prosecution version, this Arun Shukla was coming from Kiccha to Rudrapur in his private jeep along with his other companions. One of them has also been produced as PW3 to prove the occurrence. The deceased Dhananjay Shukla was scooter borne and he, too, was coming from Kiccha to Rudrapur and his scooter was just few yards ahead from the jeep of Arun Shukla. As Dhananjay Shukla was passing on the main road, which was few paces away and in between only there were sub lane and culvert for the factory of A1, he was got stopped by A2 and A3 at the instigation of A1. The latter exhorted A2 and A3 saying that they would finish his scoundrelly activities at that opportune moment. Having said this, A1 snatched the automatic lethal weapon from the hand of A3 and opened the fire on Dhananjay Shukla. The fire hit the deceased as well as some passer-by. This indiscreet firing by A1 created a panic at the place of occurrence. The incident was witnessed by Arun Shukla and his companion PW3, who were just few paces ahead in their jeep. They picked up the mortally wounded Dhananjay Shukla and shifted him to Government Hospital, Rudrapur, where he was declared brought dead. It was also stated in the FIR that the deceased fought a college election of the student

leadership in which he defeated his opponent, who was supported by A1. So, this was, *inter alia*, the cause of enmity between the appellants and Dhananjay Shukla. The FIR was lodged on the same day 24.4.1998 at 17.10 PM.

5. Significantly there is a cross-version of the occurrence and the FIR of that cross-version could be lodged by A1 on 29.4.1998 at 17.25 PM through the Jail Superintendent. The version of A1 is that the deceased Dhananjay Shukla entered into his factory, where he along with A2 and A3 as well as his wife (of A1) were present. Since the deceased Dhananjay Shukla was in the habit of recovering the illegal money at the strength of his untoward scoundrelly activities from the persons including A1 who was monetarily sound, so for that purpose he came in the factory along with his like minded companions and as usual demanded the money. His demand was resisted by A1. After a bout of verbal sparing, the quarrel escalated. A companion of Dhananjay Shukla, namely, Sunil, having the fire weapon with him, opened the fire which hit the face of A3. A3, being the Security Officer having automatic fire weapon with him, also opened the fire, which incidentally hit one unknown person Deewan Singh, who at that very time had come inside the factory in order to meet his friend, namely, Vinod, a worker of the factory. That Deewan Singh since was mortally wounded, so he was shifted to Government Hospital, Rudrapur and his dying declaration was recorded by the Sub Divisional Magistrate, Rudrapur on 24.4.1998. The recording could come to an end at 9.44 PM. This Deewan Singh was not aquatinted with A1, but he has stated in his dying declaration that the quarrel occurred inside the factory and a black complexion person opened the fire on Dhananjay Shukla with an automatic machine gun indiscreetly making Dhananjay Shukla fell

down on the ground and he also became the prey of this indiscreet firing and the fire hit his abdomen. Even after getting injured by the said fire, he came out from the factory in order to save his life and some person on scooter left him at the door of Kamlesh Shukla (a very close relative of Dhananjay Shukla), from where Rajeev Shukla (son of Kamlesh Shukla) brought him to the hospital.

6. The FIR lodged by A1 was also investigated and the chargesheet was submitted against Sunil Chauhan, Ramesh Bairagi and Rajesh Honey. These three persons were the companions of Dhananjay Shukla at the time of occurrence. Both the trials proceeded, but in the cross-trial, the accused persons (companions of Dhananjay Shukla) were acquitted by the learned Trial Judge, while the appellants have been found guilty as aforementioned.

7. I have heard the arguments of the learned Counsel for the appellants as well as State Counsel and have gone through the judgment in question.

8. I find that the appellants have been found guilty on the basis of dying declaration of Deewan Singh, recorded on 24.4.1998 at 9.44 PM in the hospital at Rudrapur, corroborated by the testimony of informant Arun Shukla PW2, Sachhidanand Dubey PW3 and Rameshwar Nath Mishra PW4. The genuineness of the dying declaration, in question, has been assailed by the learned Counsel of the appellants on the ground that Deewan Singh was undoubtedly in a critical condition, so he was referred to the District Hospital, Bareilly from Rudrapur Hospital. Thus he was discharged from Rudrapur Hospital on 24.4.1998 at 7.30 PM, as has been proved by the Ex. Kha-1, which is discharge slip issued by the Rudrapur Hospital. If he was discharged from Rudrapur Hospital at 7.30 PM, then how the dying declaration which has been

relied upon by the Trial Court, could be recorded by the SDM of the area at 9.44 PM of that very day in Rudrapur hospital itself.

9. The aforementioned discrepancy has been answered in the impugned judgment by the learned Trial Judge stating that in Government Hospitals, it was just possible that the patient remained lay on his bed in the hospital itself even after the preparation of discharge slip. If this argument is accepted for a moment, then further it was not possible for Deewan Singh to get himself admitted in Bareilly Hospital at 10.50 PM on 24.4.1998, which is proved by the information provided from the office of Divisional Additional Director/Chief Medical Superintendent of Bareilly Hospital. It is a public document issued by a competent officer of a responsible office. So, it is difficult to doubt its reliability. From Rudrapur to Bareilly, it is roughly 77 kilometres. So, even soon after the moment of recording the dying declaration in Rudrapur at 9.44 PM, it was not possible for this Deewan Singh to travel in such a critical state inasmuch as 77 kilometres and get himself admitted within one hour and ten minutes in Bareilly Hospital. So, the argument of learned Counsel of the appellants is that since it was a BJP Government in the U.P. State at that time, which has not been denied even by PW2 Arun Shukla who was a big political leader of that party, so the said dying declaration was recorded by the SDM under his influence at any other time, but not on 24.4.1998 at 9.44 PM. This argument is understandable.

10. Arun Shukla has himself admitted that he is accused in a number of criminal cases, inasmuch as 20 cases including the heinous ones. His witness PW3 Sachhidanand Dubey has also admitted that he has been the accused in a murder trial of his own real uncle

Damodar Dubey. So, the sanctity of their characters is discernable by this Court. It is difficult to inspire credence on their testimony for yet another sound reason. If they are on the road, riding in their jeep, just 10 to 15 paces away from the scooter ridden Dhananjay Shukla, then their conduct was not natural. It was unnatural for them not to come at the spot in order to assist his real nephew Dhananjay Shukla. PW2 has also admitted that he had the licensee weapon. Had he been on the spot at a distance of 10-15 paces chasing the scooter borne Dhananjay Shukla, then the natural conduct of PW2 Arun Shukla would have been to come forward in order to rescue his nephew. It shows that PW2 and PW3 are not the ocular witnesses of the moment.

11. PW4 Rameshwar Nath Mishra has also been examined by prosecution, but looking to his testimony I find that it is so discrepant and incongruous from the story as projected by the prosecution that it is difficult to believe his presence at the spot. He has deposed that Dhananjay Shukla fell down on the earth at the gate of the factory of Jawahar Singh Parihar, while the story that firing took place outside the gate has been found to be totally unreliable. He has stated that there were number of wounded persons at the spot. Some had fallen in the pit, while others were lying fallen on the side of the road. This by itself is against the prosecution story. The persons who had been mortally wounded were only two individuals, one Dhananjay Shukla and another Deewan Singh. So, the statement of this witness that a number of persons had fallen either in the pit or on the roadside because of this indiscreet firing at the spot is false.

12. Hence, the dying declaration and testimony of PW2 and PW3 are wholly unreliable. This dying declaration

is unreliable for yet another reason. Deewan Singh when lost the hope of his life in Bareilly Hospital, he got himself discharged from there and went to his native town Almora. He was admitted there in the hospital. His second time dying declaration was recorded on 6.5.1998 at 18.45 PM, wherein he has stated that the fire was opened by one of the young persons, who had assembled there in a group, and this fire hit the face of a police personnel. The police personnel was none other but the A3, Security Officer of A1. His injury has been stated on oath by Bhawan Singh Dhami in the cross Sessions Trial No. 82/2008. The certified copy of the same has been filed on record. Deposition of Bhawan Singh stating the injury finds support from the injury report, which has been annexed along with the affidavit of Smt. Kunti Parihar, wife of A1, which has been produced before this Court as an additional evidence and the Court admits the same in exercise of its powers under Section 391 CrPC.

13. The first dying declaration is unworthy of trust for one more reason, which indicates that it was not recorded on 24.4.1998 at 9.44 PM, as has been shown by the SDM. The chargesheet against all the appellants was filed on 5.7.1998. But this dying declaration was neither with the chargesheet nor in the Court of CJM. The same could be highlighted by the prosecution/Investigation Officer on 22.10.1998 producing the same in the Court of CJM because it was asked by the Hon'ble Allahabad High Court at the time of hearing the bail application of A1. So, along with the dying declaration dated 6.5.1998, this dying declaration of 24.4.1998 was also produced in addition to. The possibility cannot be ruled out that this dying declaration of 24.4.1998 was recorded by the local administrative officer with the assistance of the local doctor

under the unholy influence of a mighty politician, who was none other than Arun Shukla.

14. In view of what has been stated above, I am of the view that there is perversity in the finding of conviction as recorded by the learned Trial Judge. This judgment cannot be kept sustained in the eyes of law. So, the impugned judgment is hereby set aside. Conviction and sentence of the appellants are quashed. A2 Guman Singh and A3 Bhawan are on bail. Their bail bonds and sureties are discharged. They need not surrender unless required in any other case. A1 Jawahar Singh Parihar is in jail. His bail bond and sureties are also discharged. He shall be set free from his incarceration if his detention is not wanted in any other case. Let a copy of this judgment and order, along with LCR, be sent to the Court below.

(Servesb Kumar Gupta, J.)

Prabodh